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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,255	11/20/2001	Ming-Hung Lin	TW 000008	9593
24737 7590 02/28/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
FOX, BRYAN J				
ART UNIT		PAPER NUMBER		
2617				
MAIL DATE		DELIVERY MODE		
02/28/2008		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MING-HUNG LIN

Appeal 2007-3259
Application 09/989,255
Technology Center 2600

Decided: February 27, 2008

Before: ANITA PELLMAN GROSS, JOHN A. JEFFERY, and
KEVIN F. TURNER, *Administrative Patent Judges.*

TURNER, *Administrative Patent Judge.*

Opinion concurring-in-part and dissenting-in-part filed by Administrative
Patent Judge JEFFERY.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from the final rejection of
claims 1-6, 8, 9, 12-16, and 18. We have jurisdiction under 35 U.S.C.
§ 6(b).

Appellant discloses an arrangement whereby an auxiliary
communication session is established with an auxiliary rendering device by
a mobile device based on a primary communication session between the

mobile device and a content server through a transcoding proxy. The application also focuses on mobile devices and auxiliary rendering devices that permit such an arrangement. (Specification 1: 1-10).

Independent claim 1 is representative of many of the claims and reads as follows:

1. A mobile device, comprising: primary communication means for establishing a primary communication session via a transcoding proxy with a content server; and auxiliary communication means for establishing an auxiliary communication session with an auxiliary rendering device, the auxiliary communication session including content of the primary communication session that is adapted to the capabilities of the auxiliary rendering device, wherein the auxiliary communication means are arranged for receiving an assistance message from the auxiliary rendering device, the assistance message comprising information on the rendering capabilities of the auxiliary rendering device.

Independent claim 8 is also representative of some of the claims, reads as follows:

8. An auxiliary rendering device, comprising: mobile device communication means for establishing an auxiliary communication session with a mobile device; and rendering means for rendering content received in the auxiliary communication session, wherein the mobile device communication means are arranged for transmitting an assistance message comprising information on the rendering capabilities of an auxiliary rendering device to the mobile device.

The Examiner relies on the following prior art references to show unpatentability:

Bruckert

US 5,390,339

Feb. 14, 1995

Tryding	US 5,880,732	Mar. 9, 1999
Broderick	US 5,995,829	Nov. 30, 1999
Otsuka	US 6,330,448 B1	Dec. 11, 2001
Baranowski	US 6,473,630 B1	Oct. 29, 2002
Schramm	US 6,542,742 B2	Apr. 1, 2003
Mäkipää	US 6,556,217 B1	Apr. 29, 2003
Erekson	US 6,622,018 B1	Sep. 16, 2003
Ranta	US 6,775,558 B1	Aug. 10, 2004

The Examiner rejected, under 35 U.S.C. § 103(a):

claims 1-4 as unpatentable over Tryding, Mäkipää and Erekson,
claim 5 as unpatentable over Tryding, Mäkipää, Erekson and Ranta,
claims 6 and 15 as unpatentable over Tryding, Mäkipää, Erekson and
Otsuka,
claims 8 and 9 as unpatentable over Tryding and Erekson,
claim 12 as unpatentable over Tryding, Mäkipää, Erekson and
Schramm,
claim 13 as unpatentable over Tryding, Mäkipää, Erekson and
Bruckert,
claim 14 as unpatentable over Tryding, Mäkipää, Erekson and
Broderick,
claim 16 as unpatentable over Tryding, Mäkipää, Erekson and
Baranowski, and
claims 18 as unpatentable over Tryding, Erekson and Baranowski.

Claims 1-9, 12-16, 18, and 19 are pending in the instant application, where
claim 19 has been allowed, and claim 7 has been objected to as being
dependent on a rejected base claim.

We consider Appellant's claims as standing or falling together in two groups based on the distinct rejections and arguments presented by Appellant, and we treat:

Claim 1 as a representative claim of Group I (claims 1-6 and 12-16);
and

Claim 8 as a representative claim of Group II (claims 8, 9, and 18).
See 37 C.F.R. § 41.37(c)(1)(vii).

Appellant contends that the Examiner erred in indicating that the claimed subject matter would have been obvious. More specifically, Appellant argues that not all of the elements of the claims have been taught or suggested by the cited prior art references. (Br. 4-8). The Examiner finds that the functional language in the apparatus claim is not necessarily limiting and all of the elements of claim 1 are found in the cited prior art references. (Answer 17-18).

We affirm-in-part.

ISSUE

Has Appellant shown that the Examiner erred in finding claims 1-6, 8, 9, 12-16, and 18 obvious over the cited prior art references?

FINDINGS OF FACT

1. The Specification details the use of a transcoding proxy to facilitate access to the rich content offered by various information services. This occurs when the intended content contains something beyond the capability of the mobile device. The transcoding process typically involves actions such as adjusting the presentation so it will fit on the small screen on the mobile device, removing unnecessary elements such as audio for devices

that have no sound capabilities, scaling graphics to an appropriate size, compressing data for transmission to the mobile device, converting from e.g. HTML to WML. The Specification also discusses that given the smaller size of display of the mobile device, the use of an auxiliary rendering device allows for presentation on a larger display, but the displayed data is limited to that transcoded for the mobile device. (Specification 1: 1-10 and 20-28; 2:9-15).

2. Appellant discloses a system whereby an auxiliary communication session is established with an auxiliary rendering device by a mobile device based on a primary communication session between the mobile device and a content server through a transcoding proxy. The auxiliary communication session includes content that takes into account the rendering capabilities of the auxiliary rendering device. (Specification 6:3-9:15; Fig. 1, elements 101-105, 110, 120, and 121).

3. Independent claim 1 recites, in part, “the auxiliary communication session including content of the primary communication session that is adapted to the capabilities of the auxiliary rendering device.” Independent claim 8 recites, in part, “rendering means for rendering content received in the auxiliary communication session.”

4. Trying is directed to method and apparatus enabling the usage of a remote display monitor for presenting display data from a mobile telephone. The communications link between the mobile telephone and a receiver of a display monitor enables the transmission of numeric and textual data intended to be displayed on a display associated with a mobile telephone on the larger screen of the remote display monitor. The type of data presented

on the display monitor may be selectively programmed by a user. (Abstract; col. 2, ll. 26-34; Fig. 1, elements 5, 10, 15, 20, 25, and 30).

5. Mäkipää discloses the pagination of information received from a content provider so that it may be displayed on any type of user terminal having any size screen and having different types of mechanisms for input of information. The system has a pagination and terminal adaptation module which calculates the space needed by elements to be displayed on a user terminal. When sufficient space does not exist on the user terminal screen, elements are resized to make them fit. The pagination and terminal adaptation module accesses a database of user terminal profile information to determine the characteristics of the user terminal as well as the screen size. Using this system a user is able to access web site pages regardless of the type of terminal being used and no matter how small the screen size is. (Abstract; col. 6, ll. 45-51; Figs. 1 and 2, elements 10, 20, 30, and 90).

6. Erikson is directed to a system and method for controlling remote devices over a wireless connection, including Bluetooth-enabled devices. In one embodiment, the characteristics and capabilities of remote devices are identified in a response to the hand-held computer system. In another embodiment, the characteristics and capabilities of various types of devices are stored in a database or lookup table in a memory unit of the hand-held computer system and selected through an identifier received from the remote device. (Abstract; col. 10, ll. 48-56).

7. Ranta is directed to a system for establishing a local communication connection between a terminal of a cellular radio system and an accessory device on a clear radio channel, where that radio channel is preferably a

code channel of a CDMA system. The connection may be active all the time when a terminal and an accessory device are near enough to each other so that it is possible to establish a connection, or automatic activation of the connection may result when either one of the devices has data to be transmitted to the other device. (Abstract, col. 9, ll. 18-20).

8. Otsuka discloses that a global database is provided in each node in a system for storing shared data for verification of authorized mobile stations when accessing the network via a wireless cell-site station. A mobile station monitors the strength of its downlink signal from a first cell-site station, and if it falls below a threshold, the mobile station begins a scan across the spectrum. If a strong signal is detected, it stops the scan and transmits a handover request message to a second cell-site station transmitting that strong signal. (Abstract; Fig. 3).

9. Schramm discloses a solution to the problem of cell selection, for e.g. cell handover, in mobile telecommunication systems, and more particularly to the problem of selecting the optimum cell among cells with differing capabilities due to different air interface modes. The reference discloses that an algorithm is used to determine, by monitoring, the capabilities of the base station candidates, and selecting a handover candidate based on the attributes and capabilities of the base station candidates. (Abstract; Col. 5, l. 56-col. 6, l. 23; Fig. 3a).

10. Bruckert discloses a radio communication system which has a plurality of transceivers having known locations and at least one remote unit communicating a signal to at least one of the plurality of transceivers. The radio communication system selects a serving transceiver for the remote unit

by estimating the remote unit's location within the radio communication system in response to collected signal characteristics measured by a set of transceivers from the plurality of transceivers receiving the communicated signal. (Col. 2, ll. 39-52).

11. Broderick is directed to a dual-mode wireless communications system with network-programmable system preferences for specifying system selection parameters for use by a mobile station. The system uses a digital acquisition timer to determine the length of time that is allowed for attempting to acquire the digital system before determining that no digital service is available. (Abstract; col. 5, ll. 26-29).

12. Baranowski discloses a headset for wireless communicating with a personal electronic device, such as a wireless phone, provides audio output based on an audio signal from the personal electronic device. (Abstract).

PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellants to overcome the *prima facie* case with argument and/or evidence. *See Id.*

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The analysis need not seek out precise teachings directed to the specific subject matter of the claim but can take into account the inferences and the creative steps that a person of ordinary skill in the art would employ. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007).

The claims on appeal should not be confined to specific embodiments described in the Specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (*en banc*). During *ex parte* prosecution, claims must be interpreted as broadly as their terms reasonably allow since applicants have the power during the administrative process to amend the claims to avoid the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

ANALYSIS

With respect to the claims of Group I, Appellant argues that the combination of Tryding, Mäkipää and Erikson fails to disclose that the “auxiliary communication session [includes] content of the primary communication session that is adapted to the capabilities of the auxiliary rendering device.” Appellant points out that Tryding discloses only that numeric and textual data is sent from the mobile telephone to the remote display monitor. (Finding of Fact 4). The Examiner responds that the pagination module of Mäkipää teaches this aspect but we do not agree. (Answer 17).

While we agree that Mäkipää teaches the transcoding of data so that it can be properly rendered on a user terminal, (Finding of Fact 5), we do not agree that the content server of Mäkipää would supply data adapted to a user terminal and some auxiliary rendering device that could be attached to the user terminal. Thus, while content would be paginated so that it appeared correctly on the user terminal, there is no teaching of some further pagination that would be performed on an attached auxiliary rendering device. In other words, in Mäkipää, the transcoding is specific to the user terminal being served and not to some subsequent rendering device.

And while the Examiner identifies that Erikson teaches the sending of capabilities of an auxiliary rendering device to a controlling device, (Finding of Fact 6), we can find no teaching or suggestion that such capabilities be forwarded on to some other device, such as a content server. Without such a teaching of the content servers being provided with the knowledge of the capabilities of the auxiliary rendering device, such knowledge would remain solely with the mobile device. In other words, if the content server does not know about the capabilities of the auxiliary rendering device, it cannot supply content of the primary communication that is adapted to those capabilities.

As such, we find the combination of Tryding, Mäkipää, and Erikson would have allowed for an auxiliary rendering device to supply its capabilities to a mobile device and to have a session that is transcoded for the mobile device from a content server to be displayed on the auxiliary device. However, we find no disclosure that would teach or suggest an “auxiliary communication session including content of the primary communication session that is adapted to the capabilities of the auxiliary rendering device.”¹ Therefore, we find the rejection of claim 1 over Tryding, Mäkipää, and Erikson to be made in error. Additionally, we do not find the other cited prior art references to cure the deficiencies of the

¹ The Dissent has a differing interpretation of the language of claim 1, wherein the Dissent takes the position that if the data sent to the mobile phone or a portion thereof is capable of being rendered on the auxiliary rendering device, the limitation of claim 1 is met. We find the adaptation to the capabilities of the auxiliary rendering device to be an explicit requirement of claim 1.

rejection of claim 1. As such, we find the rejections of the Group I claims to have been made in error.

With respect to the claims of Group II, we agree with the Examiner that all of the elements of representative claim 8 are taught or suggested by Tryding and Erikson. As opposed to the above analysis, claim 8 does not recite that the content of the primary communication session is adapted to the capabilities of the auxiliary rendering device, but merely recites that an auxiliary communication session is established and content received in the auxiliary communication session is rendered by the auxiliary rendering device. (Finding of Fact 3). This aspect of claim 8 is taught by Tryding. (Finding of Fact 4). The remainder of claim 8 recites that the rendering capabilities of the auxiliary rendering device are sent to the mobile device, which is taught by Erikson. (Finding of Fact 6). Since we find that the Examiner properly combined Tryding and Erikson in the rejection of claims 8 and 9, we affirm the rejection of the claims of Group II.

Additionally, while the Appellant has argued that the arguments made against the rejection of claim 1 also apply to the rejection of claim 8, (Br. 7), we do not find the arguments to be apt, given the differences in the claim language found in claims 1 and 8. (Finding of Fact 3). Appellant also addresses the rejections of claims 5, 6, 9, 12-16, and 18 by indicating that those rejections should be reversed based on the dependencies of those claims. We reverse the rejections of claims 5, 6, and 12-16, as those claims depend from claim 1, and affirm the rejection of claims 9 and 18, as those claims depend from claim 8.

CONCLUSION OF LAW

We conclude that Appellant has shown that the Examiner erred in rejecting claims 1-6 and 12-16 under 35 U.S.C. § 103(a). We also conclude that Appellant has not shown that the Examiner erred in rejecting claims 8, 9, and 18 under 35 U.S.C. § 103(a), and we affirm the Examiner's rejection of those claims.

DECISION

The rejection decision of the Examiner with respect to the rejection of claims 1-6 and 12-16 as obvious over the cited prior art is reversed. The decision of the Examiner with respect to the rejection of claims 8, 9, and 18 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

JEFFERY, *Administrative Patent Judge*, CONCURRING-IN-PART,
DISSENTING-IN-PART:

I concur with the majority's affirmance of the Examiner's rejections of the claims of Group II, namely claims 8, 9, and 18 (Maj. Op. 11-12). But

I respectfully dissent from the majority's reversal of the Examiner's rejection of representative claim 1 of Group I. For the reasons that follow, I would affirm the Examiner's rejection of representative claim 1.

Tryding discloses a mobile telephone 10 that communicates with two distinct devices via two corresponding communication links: (1) a downlink 30 that facilitates communication between a base transceiver station 25 and the mobile telephone, and (2) a communications link 5 that facilitates communication between the mobile telephone and a display monitor 15 (Tryding, col. 2, ll. 27-51; Fig. 1).

The Examiner finds that these distinct communication links in Tryding correspond to the recited primary and auxiliary communication means for establishing primary and auxiliary communications sessions respectively (Ans. 4, 17). These findings are undisputed.

The key dispute is whether the auxiliary communication session includes *content* of the primary communication session that is *adapted to the capabilities* of the auxiliary rendering device. The majority finds that this limitation is not taught nor suggested by collective teachings of Tryding, Mäkipää, and Erikson (Maj. Op. 10). But given the broad scope of this limitation, I find that skilled artisans need look no further than the disclosure of Tryding for this teaching.

In Tryding, content is sent from the base transceiver station 25 to the mobile telephone (i.e., the "primary communication session")² in the form of

² Tryding does not indicate that the primary communication session (i.e., between the base transceiver station and the mobile telephone) is via a transcoding proxy with a content server. Based on this record, however, I see no reason why the data and messages sent from the base transceiver station could not originate from a content server with a transcoding proxy

data and messages which may include alphanumeric data (Tryding, col. 2, ll. 30-35). Due to the small size of the mobile telephone's display 35, this received data may be difficult to view (*id.*, col. 2, ll. 36-38; col. 1, ll. 23-25). Therefore, the data is sent from the mobile telephone to an external display monitor 15 with a more easily readable visual display (i.e., via an "auxiliary communication session") (*id.*, col. 1, ll. 39-53; Abstract).

Thus, the *content* (i.e., data and messages) sent from base transceiver station 25 to the mobile telephone (i.e., the "primary communication session") is ultimately displayed on the display monitor 15 via the communications link 5 (the "auxiliary communication session"). That the content is in the form of *displayable* (and therefore viewable) data and messages (e.g., numeric and textual data) means that it is "adapted to the capabilities" of the auxiliary rendering device (the display monitor 15), at least with respect to the monitor's display capabilities. Indeed, if the content received by the mobile telephone was not displayable (and therefore not viewable) content, there would be no need to send this data to the external display monitor at all.

Simply put, the content sent by the base transceiver station to the mobile telephone is displayable numeric and textual content. This content is "adapted to the capabilities" of the auxiliary rendering device (the display monitor) since the monitor is likewise capable of displaying numeric and textual content. Even if the mobile telephone transforms the form of the

such as that shown by Mäkipää. In my view, coupling the base transceiver station in Tryding to a content server (e.g., on a network) would have been well within the level of skilled artisans and tantamount to the predictable use of prior art elements according to their established functions. See *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740 (2007).

received data into display signals compatible with the display monitor (e.g., IR or RF signals),³ the underlying *content* essentially remains the same irrespective of whether it is displayed on the mobile telephone or the display monitor.

Furthermore, even if the content sent from the base transceiver station was intended to be displayed only on the mobile telephone, the fact that this content is likewise displayable (and therefore viewable) on other rendering devices means that the content is nonetheless “adapted to the capabilities” of the auxiliary rendering device.⁴

That said, if the content sent by the base transceiver station were another type of content that was not displayable on a screen (e.g., audio), then we would have a different situation. In that case, I could not say whether the content sent from the base transceiver station would necessarily be adapted to the capabilities of the display monitor since the display monitor may not include the ability to generate audio and would therefore be incapable of rendering audio content (e.g., a standard computer monitor).

³ See Tryding, at col. 2, ll. 52-61 (noting that the communications link 5 may be an infrared (IR) or RF communications link); *see also* col. 3, ll. 12-16 (noting that display monitor communications function 40 provides the physical parameters, bit rates, and emitting levels necessary to generate the communications link with standard television set parameters).

⁴ The majority asserts that “[i]f the content server does not *know* about the capabilities of the auxiliary rendering device, it cannot supply content of the primary communication that is adapted to those capabilities” (Maj. Op. 10; *emphasis added*). But claim 1 does not require the source of the content in the primary communication session (e.g., the content servers) have “knowledge” of the capabilities of the auxiliary rendering device. All the claim requires is that the transmitted content be adapted to the capabilities of the auxiliary rendering device -- content that fully meets the limitation if it *happens* to be adapted to the capabilities of the auxiliary rendering device.

But in Tryding, the content received by the mobile telephone is clearly intended to be viewed on a screen, and the rendering capability of such viewable content is shared by both the telephone and display monitor alike.

Furthermore, although the Examiner relies on Erekson for the recited assistance message from the auxiliary rendering device (Ans. 5, 6, 18), the functionality of the display monitor in Tryding actually suggests this limitation as well. Specifically, the display monitor 15 can include a transmitter 50 that transmits confirmation commands associated with each command issued by the mobile telephone's display monitor communication function 40 (Tryding, col. 3, ll. 44-52; col. 2, ll. 46-51).

In my view, the specific information contained in the "assistance message" recited in claim 1 merely constitutes non-functional descriptive material.⁵ Nevertheless, the confirmation commands sent by the display monitor in Tryding fully meet this limitation since these "assistance messages" are directly related to the monitor's rendering capabilities with respect to displaying text, digits, and removing displayed data.⁶

For the foregoing reasons, I find the collective teachings of the cited references amply teach and suggest all limitations of representative claim 1. Therefore, I would affirm the Examiner's rejection of that claim.

⁵ Since the mere content of the assistance message does not further limit the claimed invention either functionally or structurally, it essentially constitutes non-functional descriptive material. Such non-functional descriptive material does not patentably distinguish over prior art that otherwise renders the claims unpatentable. See *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004).

⁶ See Tryding, at col. 3, ll. 50-52 (listing three different confirmation commands "DISPLAY_TEXT_CNF"; "DISPLAY_DIGITS_CNF"; and "REMOVE_DISPLAYED_DATA_CNF" corresponding to associated commands from the mobile telephone).

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Application 09/989,255

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